IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

VALERIE MACK,	§	
	§	
Plaintiff,	§	
v.	§	3:13-CV-1976-P
	§	
AVARA COMMUNITY HEALTH SERVICES, INC., & ALBERT OGUNTULA,	§	
	§	
	§	
	§	
Defendants.	§	

ORDER

Now before the Court is Plaintiff Valerie Mack's Motion for Summary Judgment, filed on October 26, 2015. Doc. 30. Defendants Avara Community Health Services, Inc. ("Avara") and Albert Oguntula did not file a response. The Court did not issue a 10-day order.

After reviewing the parties' briefing, the evidence, and the applicable law, the Court GRANTS Mack's Motion for Summary Judgment. Doc. 30

I. Background

Mack filed this lawsuit on October 26, 2013, seeking damages for unpaid overtime pay under the Fair Labor Standards Act ("FLSA"), as amended, 29 U.S.C. § 216(b). Doc. 1. Defendants have not hired counsel. *See* docs. 17, 19. But they did file an answer, denying some of Mack's allegations. Doc. 14 at ¶¶ 1-5. The Court then issued an order requiring Mack to file a motion for summary judgment. Doc. 29. The Court now evaluates this motion.

II. Legal Standard & Analysis

A. Summary Judgment Standard

Summary judgment shall be rendered when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party bears the burden of informing the district court of the basis for its belief that there is an absence of a genuine issue for trial and of identifying those portions of the record that demonstrate such absence. *See Celotex*, 477 U.S. at 323. However, all evidence and reasonable inferences to be drawn there from must be viewed in the light most favorable to the party opposing the motion. *See United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

Once the moving party has made an initial showing, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine fact issue. Fed. R. Civ. P. 56(e); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). The party defending against the motion for summary judgment cannot defeat the motion, unless he provides specific facts demonstrating a genuine issue of material fact, such that a reasonable jury might return a verdict in his favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Mere assertions of a factual dispute unsupported by probative evidence will not prevent summary judgment. *See id.* at 249-50. In other words, conclusory statements, speculation, and unsubstantiated assertions will not suffice to defeat a motion for summary judgment. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996) (en banc); *see also Abbott v. Equity Grp., Inc.*, 2 F.3d 613, 619 (5th Cir. 1993) ("[U]nsubstantiated assertions are not competent summary judgment evidence." (citing *Celotex*, 477 U.S. at 324)). Further, a court has no duty to search the record for evidence of genuine issues. Fed. R. Civ. P. 56(c)(1) & (3); see *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998). It is the role of the fact finder, however, to weigh conflicting evidence and make credibility determinations. *Liberty Lobby*, 477 U.S. at 255.

B. No Fact Issue Exists

Mack contends that she has put forth sufficient evidence of a prima facie claim under the FLSA. Doc. 31. As mentioned above, Defendants do not respond.

In order to prevail on her motion, Mack must show (1) that there existed an employer-employee relationship during the unpaid overtime periods claimed; (2) that the employee engaged in activities within the coverage of the FLSA; (3) that the employer violated the FLSA's minimum wage and overtime wage requirements; and (4) the amount of compensation due. *See Johnson v. Heckmann Water Res. (CVR)*, 758 F.3d 627, 630 (5th Cir. 2014); *Harvill v. Westward Communications, L.L.C.*, 433 F.3d 428, 440-41 (5th Cir. 2005); *D.A. Schulte, Inc. v. Gangi*, 328 U.S. 108, 120 (1946).

Mack has introduced uncontroverted evidence that she was Defendants' employee. An employee is employed for purposes of the FLSA if the employer has "knowledge, actual or constructive, that [s]he was working." *Newton v. City of Henderson*, 47 F.3d 746, 748 (5th Cir. 1995). Defendants have admitted that Mack was an employee. Doc. 14 at ¶ 2, 3. Furthermore, Mack swears in her declaration that she was employed, that Defendants required her to work numerous hours, that Defendants were "substantially in control of the terms and conditions of [her] work," and that "Oguntula . . . dictated [her] work schedule, and was in total control of the conditions and terms of [her] employment." Doc. 32 at ¶¶ 1, 3, 8. This evidence is more than sufficient to show that Mack was an employee.

Mack asserts that Defendants are an enterprise subject to the FLSA because they are engaged in the operation of a healthcare institution. Doc. 31 at 9. As evidence, Mack attaches a declaration stating that "defendants maintained and operated . . . an institution primarily engaged in the care of the mentally ill and defected patients who reside on the Defendants' premises." Doc. 32 at 2, ¶ 7. In Defendants' Answer, they state that they "did not make Five Hundred Thousand ($500,000.00) as an Incorporation [sic]." Doc. 14 at ¶ 1. They also attach a tax form in order to support their statement. *Id.* at 2.

Mack's uncontraverted evidence is enough to meet her burden. The FLSA defines an "[e]nterprise engaged in commerce" as "an enterprise whose annual gross volume of sales made . . . is not less than $500,000," or "is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises . . . ." 29 U.S.C. § 203(s)(1)(A) & (B). Because the language of the statute is disjunctive, Mack only need bring forth evidence that Defendants were engaged as an institution in the care of the mentally ill or defective. She has done so, and Defendants have failed to introduce any evidence to the contrary. For this reason, Mack has met her burden as to this element.

In order to show that Defendants violated the FLSA's overtime wage requirements, Mack again points to her declaration. Doc. 31 at 10. Mack states that she "worked an average of 105 hours per week; however, the Defendants did not maintain and [sic] records of my time worked. I was paid . . . $230.94 per week, or $2.20 per hour." Doc. 32 at ¶ 1. She also attaches a paycheck for $85.00. *Id.* at 3. In Defendants Answer, they deny that Mack worked this many hours by stating that she worked part time. Doc. 14 at ¶ 2.

Because the paycheck has no date and comes with no other explanation, the Court cannot determine its relevance. However, Mack's uncontradicted declaration is sufficient evidence to meet her burden because her employer did not keep records. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-88 (1946) ("an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference.").

Mack has also put forth sufficient evidence to calculate the amount of overtime compensation due. Dividing the number of hours worked in a week—105—into the salary paid—$230.94—Mack concludes that she earned $2.20 per hour. Doc. 32 at ¶1. At a minimum wage of $7.25, with overtime paid for 65 hours per week (105-40), Mack is owed $3,711.75 in minimum wage: $7.25-2.20=5.05 x 105 hours x 7 weeks = $3,711.75. *See* doc. 14 at ¶ 4. She is owed $1,649.38 in unpaid overtime: $7.25/2 = $3.63 x 65 overtime hours worked x 7 weeks = $1,649.38. Doc. 14 at ¶ 5. In total, $3,711.75 + $1,649.38 = $5,361.13. *Id.*

The Court thus grants Mack's motion as to this amount.

C. Liquidated Damages

Mack also asks the Court to impose liquidated double damages, arguing that Defendants have "waived any defense to liquidated damages because [they] failed to plead an applicable affirmative defense." Doc. 31 at 12.

The Court agrees and therefore grants Mack's motion as to liquidated double damages. An employer who violates the overtime provisions of the FLSA is liable not only for the unpaid overtime compensation but also for "an additional equal amount as liquidated damages." 29 U.S.C. § 216(b). A court can decline to award such damages if it concludes that the employer acted in good faith and had reasonable grounds to believe that its actions complied with the FLSA. 29 U.S.C. § 260. And some courts have concluded that a failure to plead good faith as an affirmative defense waives that defense. *Dutcher v. Randall Foods*, 546 N.W.2d 889, 893 (Iowa

1996) (collecting cases). But the Fifth Circuit has held that employers attempting to escape liquidated damages "face[] a 'substantial burden' of demonstrating good faith and a reasonable belief that its actions did not violate the FLSA." *Bernard v. IBP, Inc. of Nebraska*, 154 F.3d 259, 267 (5th Cir. 1998).

At the end of the day, this Court has discretion. *Id.* However, because Defendants make no attempt to argue good faith as an affirmative defense, the Court grants Mack's motion as to liquidated double damages, awarding Mack a total sum of $10,722.26.

III. Conclusion

For the foregoing reasons, the Court Grants Mack's Motion for Summary Judgment as to all issues.

IT IS SO ORDERED.

Signed this 5th day of February, 2016.

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE